

### REMARKS/ARGUMENTS

This Reply is responsive to the Office Action mailed to counsel for the Applicants on June 1, 2004. Claims 1-14 are pending in this Application. Claims 4 and 13 have been amended. Applicants request reconsideration of this Application based on the foregoing amendments and the following remarks. No new matter has been added by this reply, and Applicants submit that claims 1-14 are in a condition for allowance.

#### **Objection to Abstract**

The Abstract of the disclosure is objected to because it does not allegedly contain the technical disclosure of the improvement. Applicants have amended the Abstract pursuant to § 608.01(b) of the M.P.E.P.

#### **Objection to Appendix**

The Appendix of the disclosure is objected to on the grounds that a “computer program listing of no more than ten (10) pages . . . must be submitted either as drawings or as part of the specification.” (Office Action, dated June 1, 2004 at p. 2). Applicants respectfully disagree. Section 1.96(a) of the M.P.E.P. states that “[c]omputer program listings may be submitted in patent applications as set forth in paragraphs (b) and (c) of this section.” M.P.E.P. § 1.96(a) (emphasis added). Thus, program listings having under 300 lines or fewer, with each line consisting of 72 characters or fewer, may be submitted as drawings, as part of the specification, *or* as an appendix. M.P.E.P. § 1.96(b) and (c). Nonetheless, in the interest of facilitating prosecution, Applicants have moved the pseudocode originally contained in the Appendix of the disclosure to the written description section of the disclosure as Source Code Listings A and B. Appendices A and B have been canceled. By way of this non-substantive amendment to the disclosure, Applicants do not intend to, and do not surrender any claim scope or any equivalents of that which is literally claimed in this Application.

**Claim Rejections – 35 U.S.C. § 112**

Claims 4 and 13 stand rejected under 35 U.S.C. § 112 as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as their invention. In particular, the Examiner contends that the term “predetermined period of time” renders claim 4 indefinite due to insufficient antecedent basis. Claim 4 has been amended to provide proper antecedent basis.

In addition, Examiner contends that Applicants’ use of the term “approximately” in claims 4 and 13 render them indefinite because an acceptable range of time is not provided. Applicants respectfully disagree. The use of relative terminology in a claim does not *ipso facto* render the claim indefinite, *Seattle Box Co. v. Industrial Crating & Packaging, Inc.*, 731 F.2d 818 (Fed. Cir. 1984), and one of ordinary skill in the art would understand what Applicants regard as the invention in claims 4 and 13 with the term “approximately” utilized therein, M.P.E.P. § 2173.05(b). Nonetheless, in the sole interest of advancing prosecution, Applicants have substituted the term “about” for the term “approximately” in claims 4 and 13, terms that Applicants consider synonymous and coterminous in scope. Section 2173.05(b) of the M.P.E.P. explicitly notes that the term “about” has been adjudicated in the courts as definite.

Neither of the foregoing amendments to claims 4 and 13 are considered substantive or narrowing amendments by Applicants, and Applicants do not intend to, and do not surrender any claim scope or any equivalents of that which is literally claimed in this Application by way of these amendments.

**Claim Rejections – 35 U.S.C. § 103(a)**

Independent claims 1, 8, and 11 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over U.S. Pat. No. 5,813,009 (Johnson et al.) in view of U.S. Pat. No. 6,295,582 (Spencer) and Applicants’ admitted prior art. Applicants respectfully submit that Examiner’s assertions regarding the alleged teachings of Johnson et al. and Spencer do not teach all of the limitations of claims 1, 8, and 11.

Claims 1 and 11 recite a statistical purge procedure and method for ensuring there is adequate temporary memory for storing new statistical records before initiating the deletion of older statistical records in permanent memory, the new statistical records containing

statistical records generated while the older statistical records are being deleted. Applicants respectfully submit that Johnson et al. does not teach, disclose, or suggest a procedure or method for storing new statistical records while older statistical records are being deleted, as alleged by Examiner. Johnson et al. at column 9, lines 5-20 and column 21, lines 6-7 merely discloses a system that can store or purge records, nothing more.

Applicants also submit that Spencer at column 2, lines 40-45 does not disclose, teach, or suggest a procedure or method for ensuring there is adequate temporary memory before initiating the deletion of older statistical records in permanent memory. The Examiner contends that Spencer teaches a system and method for ensuring there is *inadequate* temporary memory before purging information from temporary memory. Thus, as understood by the Examiner, Spencer actually teaches away from the subject matter recited in claims 1 and 11. Accordingly, the alleged teachings of Johnson et al. and Spencer alone or in combination do not render claims 1 and 11 obvious under 35 U.S.C. § 103(a).

Applicants further submit that the Examiner has made no showing whatsoever regarding the alleged obviousness of Claim 8. While the Examiner rejected Claim 8 using the same analysis used to reject Claims 1 and 11 (i.e., the alleged teachings of Johnson et al. and Spencer noted immediately above), Claim 8 recites distinct subject matter. Specifically, Claim 8 recites in general a statistical purge procedure that schedules the deletion of older statistical records during a period when relatively few new statistical records are being generated. The teachings of Johnson et al. and Spencer alleged by Examiner fail to meet the limitations of Claim 8 in any manner. Consequently, Johnson et al. and Spencer do not render claim 8 obvious under 35 U.S.C. § 103(a).

Finally, because claims 2-7, 9-10, and 12-14 all depend on independent claims 1, 8, and 11, respectively, the rejections of the dependent claims cannot stand for the same reasons noted by Applicants above.

DOCKET NO.: BELL-0118  
Application No.: 10/082,846  
Office Action Dated: June 1, 2004

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**Conclusion**

Applicants respectfully submit that the pending rejections should be withdrawn and that all of the claims in this Application are in a condition for allowance.

Date: August 30, 2004



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